IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1964

No. 632

SGT. JESSE E. SNAPP,

Petitioner,

versus

HONORABLE W. D. NEAL, State Auditor, and HONORABLE JOE T. PATTERSON, Attorney OF THE STATE OF MISSISSIPPI

Respondents.

SUPPLEMENTAL PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

Petitioner's original application for a writ of certiorari in this cause was filed with the Clerk of Court, United States Supreme Court, on October 28, 1964. On January 13, 1965, the Honorable Joe T. Patterson, Attorney General for the State of Mississippi, was advised by the Clerk that the Court had requested him to file a response to the petition. This response was filed on February 15, 1965. The purpose of this supplemental petition is to respond to and clarify certain aspects raised by the response of the respondents.

1. The petitioner disputes respondent's contention that there is a "material variance" or "misstatement" in the last clause of the circumstances set forth in question numbered one of the original petition. It is a fact that respondent's trailer which is the subject of the assessment, "has never moved or used the State highways during the taxable year". The question presented in its original form is a factual recitation as it pertains to this case and focuses the court's attention on the issue that petitioner seeks to have the Supreme Court review. Section 10007-53, Mississippi Code (see original petition p. 46), provides that in order to comply with the requirement for registration that "at the time such registration is made, and before a registration certificate and label may be issued, the said owner, occupant, user, possessor, or controller of said house trailer shall pay a registration fee of two dollars and fifty cents ($2.50) *together with all ad valorem taxes due on said house trailer for the then fiscal year.*" . . . (italics added). Petitioner submits therefore that such a tax is invalid as to him since Congress has enacted legislation (50 U.S.C. App. 574) which clearly exempts the state other than that of his domicile from imposing an ad valorem tax on personal property under the conditions set forth in his original petition. Since he has no ad valorem tax to pay on his personal property (house trailer) and since compliance with § 10007-53 establishes as a prerequisite for such registration, the payment of "all ad valorem taxes due on said house trailer for the then fiscal year", becomes a situation where the state of Mississippi seeks to circumvent the clear proscription set forth in the federal statute.

2. Respondent is in error when he states (at p. 2 in addressing himself to petitioner's third and fourth questions) that petitioner's domiciliary state, i.e., South Carolina, requires the payment of taxes on a vehicle which has never physically been within the borders of South Carolina. Section 46-100 of the Laws of South Carolina (see p. 49 of petitioner's original petition) only comes into operation when a trailer is brought into South Carolina or is used in South Carolina as a dwelling place. (see also § 46-11 Laws of South Carolina p. 48 of petitioner's original brief). It is clear that registration in South Carolina is contingent upon the "trailer" being brought into the state or purchased and used for dwelling purposes within the state of South Carolina. The fees for house trailers are set forth in §46-35.3 and license fee is set forth in § 46-100.2. In any event, the petitioner's trailer, not having been physically within the State of South Carolina was not "required" to be registered and licenced within the State. Thus, the third and fourth questions presented by the petitioner in his original petition are factually accurate.

3. Respondent on p. 3 of his Response, attempts to restate the questions involved, but he is in error in the following particulars:

a) It is not contended that immunization from registration as required by state law is the result of 50 U.S.C. 574 (2) (§ 514 Sailors' & Soldiers' Civil Relief Act). Petitioner, however, does contend that when payment of an ad valorem tax on a trailer is a prerequisite to registration thereof, as is the case here, then the federal immunity applies to the ad valorem tax. To hold otherwise would mean that a State, such

as Mississippi in this case, could defeat or circumvent the intent of Congress by the subtlety of seeming to require registration only, when in fact no registration is possible until the ad valorem tax is paid, and paid moreover, at the *beginning* of the tax year. To illustrate the extremes to which this argument could go, the following hypothetical is apropos: Serviceman A, a resident of State X, seeks to register his house trailer in the State of Mississippi on 1 November for the ensuing year. One month later, he is transferred out of the State of Mississippi. His house trailer has not used the roads, highways or bridges of the State. He sells his trailer or it burns and is destroyed, and the State has already exacted from him an ad valorem property tax on his house trailer plus the registration fee. The statute is silent as to any application for refund.

A further illustration is the requirement for registration where no use of the roads or bridges is contemplated. Illustrations of such cases might be: (1) operating any motor vehicle within the immediate confines of one's own private property, viz., farm, etc.; (2) motor vehicles in various stages of disrepair (junk) and not used on the roads; (3) motor vehicle on blocks and immobilized for future use as a classic or antique; or (4) motor vehicles used in a hobby collector's stable and not used on the roads. Would Mississippi presume to require registration of such motor vehicle? Petitioner suggests that his situation falls fairly beyond the authority of the State of Mississippi to assess an ad valorem property tax on his personal property which does not have a situs in the State of Mississippi nor is such personal property, viz., motor vehicle (house trailer) moved or driven upon the

roads or highways of the State of Mississippi. Petitioner submits that he is within the protection of a federal statute, i.e., the Soldiers' & Sailors' Civil Relief Act of 1940, as amended, and as such is not liable for ad valorem property taxes to the State of Mississippi.

b) Petitioner has not failed to comply with the laws of his domiciliary State for as demonstrated above, no registration or taxation is required by South Carolina or indeed payable to South Carolina until a trailer is physically within South Carolina.

c) Petitioner did not "elect" not to register the trailer in Mississippi. In fact he did register it, but under protest, for the following reasons: 1, That the registration fee was not due or payable because the trailer had not used the highways; and, 2, That the ad valorem tax, as a prerequisite to registration was not legal because of the immunity granted in Section 514 (a). There is a contradiction in the statement that Mississippi law granted petitioner an ad valorem tax exemption. Why indeed did petitioner have to pay the tax under protest as he did; and why did all the administrative agencies of Mississippi and all its courts hold that the ad valorem tax was due and properly collected?

4. Respondent's point II at pp 6 and 7 is based upon a misconception. South Carolina does not require registration or the payment of the ad valorem tax because of legal situs alone; physical situs is a prerequisite. The exception from the immunity granted by § 514 (2) contained in the final proviso thereof comes into operation *only* when a tax or fee due and pay-

able to the domiciliary state is in fact not paid. The exception clause is not operative where there is nothing due and payable to the domiciliary state whatever may be the reason why there is nothing due and payable; and that is exactly what was held by *Dameron v. Brodhead*, 345 U.S. 322. In his reply, respondent is in fact saying that because the domiciliary state imposes no ad valorem tax in the situation in this case then Mississippi can do so, and again this is exactly the position which the Supreme Court said in *Dameron v. Brodhead* that the City of Denver could not take.

As this Court stated in *Dameron v. Brodhead*:

> "*Congress appears to have chosen the broader technique of the statute carefully,* freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the *sole right of taxation to the state of original residence whether or not that state exercised the right.*" (Emphasis supplied.)

CONCLUSION

In the light of the foregoing, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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By:_____

CERTIFICATE

I hereby certify that a copy of this petition has been mailed to the Honorable Joe T. Patterson, Attorney General of the State of Mississippi, Counsel of Record in this case, addressed to him at his public office in Jackson, Mississippi.

_____

Leon D. Hubert, Jr.